IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE FIFTEENTH DAY OF APRIL
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE B.PRAKASH RAO

WRIT PETITION NO : 14288 of 2004

Between:

Indugu Durga Prasad, S/o. Venkata Ramana,
The New India Assurance Co.Ltd., Divisional Office-I, M.G.Road, Vijayawada-520 010.

..... PETITIONER

AND

1 The New India Assurance Co.Ltd., rep. by its Chairman & Managing Director, Regd. Office at New India Assurance Building, Fort, 87, M.G.Road, Mumbai - 400 001.
2 The Assistant General Manager, Disciplinary Authority, The New India Assurance Building, Fort, 87, M.G. Road, Mumbai - 400 001.

..RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a direction, order or Writ more particularly one in the nature of Writ of Mandamus a) declaring the action of the respondents in proceedings with the Disciplinary proceedings in pursuant to the Charge Memo Dt. 7.10.2003 simultaneously when the court of competent criminal jurisdiction is trying the same set of allegations as arbitrary, illegal and not sustainable; b) Consequently direct the respondents to refrain from conducting any enquiry in pursuance of the Charge Memo Dt. 7.10.2003 and to await the result of trial in C.C.No.03/04 on the file of the Special Judge for C.B.I. Cases, Visakhapatnam.

Counsel for the Petitioner: MR.SIVA

Counsel for the Respondents: Mr. VEDULA SRINIVAS.

The Court made the following :

ORDER:

The petitioner, who has been working as Administrative Officer with the respondents herein, filed this Writ Petition, *inter alia,* seeking for a Writ of Mandamus challenging the action of the respondents in proceeding with the disciplinary action in pursuance of the charge memo dated 07.10.2003 simultaneously when a regular enquiry is pending before a Criminal Court in C.C.No.3 of 2004 on the file of the Special Judge, Central Bureau of Investigation cases, Visakhapatnam as bad, illegal and void.

The facts leading to filing of this Writ Petition are that the petitioner was initially appointed as Assistant in the year 1979 and subsequently he secured Post Graduation and also diploma in the concerned subject of Insurance, he was promoted as Senior Assistant in the year 1986, as Assistant Administrative Officer in the year 1992 and Administrative Officer in the year 2000. At the relevant point of time, he was working at Vijayawada, he has unblemished record of service. However, unfortunately he was placed under suspension in July, 2002 without disclosing any reasons and the First Information Report (for short 'F.I.R.') was lodged on 01.01.2003, which was registered as a case R.C.No. 1 of 2003 by the Superintendent of Police, Central Bureau of Investigation (for short 'C.B.I.'), Visakhapatnam alleging that as many as eight cheques were drawn for the purpose of purchase of stationery etc., but he noted his name on the cheques and deposited the same in the S.B. account mentioned therein and thus he committed the offences under Sections 409, 420, 468 and 471 of the Indian Penal Code and Section 13(2) read with 13(1) (d) of the Prevention of Corruption Act, 1988. While the criminal case was being investigated by the C.B.I., the respondents issued the impugned charge

memo dated 07.10.2003 in respect of the very same allegations forming part of F.I.R. in R.C.No. 1 of 2003, dated 01.01.2003. Thereupon, the petitioner submitted representation on 30.10.2003 pointing out that the investigation by the C.B.I. Visakhapatnam was in progress for the self same allegations and therefore it would prejudicial to his defence in the Court if he discloses the same by way of any explanation before the respondents. Thus, he sought three months time for submitting his written statement. However, as per orders dated 27.04.2004, the respondents appointed an Enquiry Officer and also a Presenting Officer and informed that the preliminary proceedings could be held on 10.05.2004 at the Regional Office, Visakhapatnam. The petitioner informed the respondents to the effect that he could not possibly attend the said enquiry in view of performance of annual ceremony of his father and sought further postponement. Later, the Enquiry Officer posted the hearing of the matter on 01.07.2004 and the same was again postponed to 08.07.2004 as per the communication dated 28.06.2004 and on the said date the petitioner denied the charges and sought time for submitting the reply. Thereupon, the matter was adjourned stating that the next date would be intimated separately. At this stage, the petitioner filed the present Writ Petition on 10.08.2004, *inter alia,* contending that the preliminary proceedings on the self same allegations are wholly unsustainable and it would be prejudicial to the petitioner's interest if he comes out with any explanation or participate in the domestic enquiry before the respondents. Therefore, it is a fit case that the departmental proceedings should be stalled till after completion of the criminal proceedings. Hence, the Writ Petition.

This Court granted an interim stay of the departmental proceedings as per the orders in W.P.M.P.No.18388 of 2004, dated 13.08.2004.

The respondents filed counter-affidavit along with a vacate stay application and at which time both the counsel requested the main case itself to be taken up for final disposal. In the counter-affidavit, it is stated that there is no dispute in regard to the chequered events as pointed out by the petitioner. However, the charge-sheet issued on 07.10.2003 would amply show the misconduct of misappropriating the funds of the respondents Company committed by the petitioner, causing heavy loss of Rs.37.10 lakhs. The petitioner did not submit any explanation to the charge sheet

and therefore, the respondents were constrained to initiate the enquiry on the said charges. Further, it is pointed out that the petitioner had already admitted his guilt as per the letter dated 21.06.2002 and therefore the present Writ Petition is only with a view to delay the proceedings. It is also pointed out that the question of stallying the disciplinary proceedings only because of the criminal case is pending in C.C.No. 3 of 2004, is wholly unsustainable having regard to the principles laid down by the Supreme Court. It is further stated that the charges leveled against him in the domestic enquiry are wholly different from the offences alleged against him in the criminal case. It is stated that there is total lack of integrity on the part of the petitioner and the acts committed are fully unbecoming of a public servant whereas the offences in the criminal case relate to the falsification of records, embezzlement of funds, criminal breach of trust etyc., Further, it is also pointed out that the criminal cases normally do take very long time and therefore the domestic enquiry cannot be stayed indefinitely nor warrants any such postponement. It is further pointed out that even though the allegations relating to both the proceedings are the same though the charges are grave in nature, there is no embargo to proceed with the disciplinary proceedings by the respondents. It is pointed out that the petitioner wants to prolong the domestic enquiry and take undue advantage of receiving from the Company, therefore, it would cause irreparable loss to the respondents and also it is against to the public interest.

O n consideration of the rival submissions, the only question which arises for consideration is as to whether on the facts and circumstances the disciplinary proceedings initiated by the respondents can be stalled till the completion of the criminal case proceedings ?

There is no dispute in regard to the petitioner's employment with the respondents and also long career. However, having regard to the certain allegations in respect of eight cheques, a crime was registered on 01.01.2003 in R.C.No. 1 of 2003 which was ultimately taken up as C.C.No.3 of 2004. Now, the respondents issued charge memo on 07.10.2003 and the petitioner did not submit any explanation thereto. Therefore, the respondents appointed an Enquiry Officer and also Presenting Officer as per the Orders dated 27.04.2004 and the enquiry was commenced and the same has been undergoing adjournments, no-doubt at the instance of the petitioner. Even

during the said enquiry, the petitioner did not file his reply. The grievance of the petitioner is that even if he comes out with any reply or explanation to the charge memo issued by the respondents, it would virtually disclose the offence, which he could possibly, file before the criminal Court and therefore, it would prejudice his interest. Thus, the grievance is against proceeding with the domestic enquiry till the completion of the criminal case. Even though both the sides sought to press upon their respective submissions but however except stating the fact that the criminal case is pending in pursuance of the F.I.R. lodged on 01.01.2003, there is nothing on record to show any progress before the said Criminal Court. Neither the C.B.I. or any such Prosecuting Agency is made a party in these proceedings nor there is any other material to show the stage at which the said criminal proceedings are. In the absence of actual position as to the progress made in the said criminal case, it cannot be said from either side as to whether there would be any efforts for early disposal of the criminal case, the delay being caused therein. No explanation is forthcoming on behalf of the petitioner as to why the C.B.I. authorities are not made parties to this writ petition. However, admittedly, as evident from their own counter, the respondents stated the facts leading to the charges before the Criminal Court and also in the domestic enquiry in respect of the very same transaction, and certainly the facts over lap, it cannot be said that the charges in the departmental enquiry are on distinct base or allegation to make out an independent act of commission or omission on the alleged misconduct for the purpose of taking any action under its own regulations. There is no dispute in regard to the principles laid down by the Supreme Court in regard to such situations, wherein it had been held that there is no bar or any embargo to proceed with the domestic enquiry in spite of pendency of the criminal case. However, it cannot be said that if there is going to be any delay, the disciplinary enquiry can be proceeded against. I n ***Kendriya Vidyalaya Sangathan & Ors. v. T.Srinivas*** it was held that:

> “The advisability, desirability or propriety, as the case may be, in regard to a departmental enquiry has to be determined in each case taking into consideration all facts and circumstances of the case. This judgment also lays down that the stay of departmental proceedings cannot be and should not be a matter of course. In the instant case,

from the order of the tribunal as also from the impugned order of the High Court, we do not find that the two forums below have considered the special facts of this case which persuaded them to stay the departmental proceedings. On the contrary, reading of the two impugned orders indicates that both the tribunal and the High Court proceeded as if a departmental enquiry had to be stayed in every case where a criminal trial in regard to the same misconduct is pending. Neither the tribunal nor the High Court did take into consideration the seriousness of the charge which pertains to acceptance of illegal gratification and the desirability of continuing the appellant in service inspite of such serious charges leveled against him. This Court in the said case of State of Rajasthan (supra) has further observed that the approach and the objective in the criminal proceedings and the disciplinary proceedings is altogether distinct and different. It held that in the disciplinary proceedings the question is whether the respondent is guilty of such conduct as would merit his removal from service or a lesser punishment, as the case may be, whereas in the criminal proceedings the question is whether the offences registered against him are established and, if established, what sentence should be imposed upon him. The court in the above case further noted that the standard of proof, the mode of enquiry and the rules governing the enquiry and trial in both the cases are distinct and different. On that basis, in the case of State of Rajasthan the facts which seems to be almost similar to the facts of this case held that the tribunal fell in error in staying the disciplinary proceedings."

In ***State Bank of India & Ors. v. R.B.Sharma*** , it was held that:

"Each case requires to be considered in the backdrop of its own facts and circumstances. There would be no bar to proceed simultaneously with departmental enquiry and trial of a criminal case unless the charge in the criminal trial is of grave nature involving complicated questions of fact and law. Offence generally implies infringement of publilc duty, as distinguished from mere private rights punishable under criminal law. When trial for criminal offence is conducted it should be in accordance with proof of the offence as per the evidence

defined under the provisions of the Indian Evidence Act, 1872 (in short the 'Evidence Act'). Converse is the case of departmental enquiry. The enquiry in a departmental proceedings relates to conduct or breach of duty of the delinquent officer to punish him for his misconduct defined under the relevant statutory rules or law. That the strict standard of proof or applicability of the Evidence Act stands excluded is a settled legal position. Under these circumstances, what is required to be seen is whether the department enquiry would seriously prejudice the delinquent in his defence at the trial in a criminal case. It is always a question of fact to be considered in each case depending on its own facts and circumstances.

There can be no straight jacket formula as to in which case the departmental proceedings are to be stayed. There may be cases where the trial of the case gets prolonged by the dilatory method adopted by; delinquent official. He cannot be permitted to, on one hand, prolong criminal case and at the same time contend that the departmental proceedings should be stayed on the ground that the criminal case is pending."

From the above, it is evident that necessarily the principles had to be aptly applied by taking into consideration the facts of each case. In this case, no-doubt, the offence alleged in both the domestic enquiry and criminal case do pertain in respect of the same transactions. However, the parameters for both will not be in the same lines. The proof requires for an offence would be totally different from the one that is required to be established for a misconduct. In fact, in such cases, even though on the face of it, over lapping appears, necessarily it has to be discerned from the angle of the proof and conclusions that has to be postponed. It is not necessary that the standard of proof requires the substantial varies. Even if it is held that no offence has been made out or any benefit of doubt is being given which leads to an acquittal of an accused, it does not automatically absolve him from holding that he is not responsible for any misconduct in domestic disciplinary action. Now, it is well stated that any finding given on a criminal side would not either bind or come against the delinquent from holding responsible for any misconduct. Further, it also cannot be said that even the defence in any way run on the same lines for both the types of

enquiries nor can it be said that one line of defence would in any way hamper the other. Even though, the petitioner has been served the charge memo by the respondents, no attempt has been made to submit any explanation on his part and he has been taking the adjournments on one count or the other and certainly it cannot be said that any explanation that would be filed before the disciplinary enquiry in this particular case would in any way hamper the defence that would be taken before the Criminal Court and therefore, the question of any prejudice does not arise. In the circumstances, it has to be held that on the facts and circumstances of this case there is absolutely no warranting reason to stall the disciplinary enquiry till the completion of the criminal case. Hence, I do not find any merits in the above Writ Petition.

The Writ Petition is accordingly dismissed. No costs.

B. PRAKASH RAO, J

15-04-2005.

Chvn.

ASSISTANT REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1 The Chairman & Managing Director, New India Assurance Co.Ltd., Regd. Office at New India Assurance Building, Fort, 87, M.G.Road, Mumbai - 400 001.
2 The Assistant General Manager, Disciplinary Authority, The New India Assurance Building, Fort, 87, M.G. Road, Mumbai - 400 001.

3. Two C.D. copies.